



28 JUL 2008

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
www.uspto.gov

POLLACK, P.C.  
The Chrysler Building  
132 East 43<sup>rd</sup> Street, Suite 760  
New York, NY 10017

In re Application of:  
SHARMA, Ravi, Ivan  
U.S. Application No.: 10/528,164  
PCT No.: PCT/US2004/024486  
International Filing Date: 26 July 2004  
Priority Date: 25 July 2003  
Atty Docket No.: 741038.1001  
For: INVERTED KEYBOARD  
INSTRUMENT AND METHOD FOR  
PLAYING THE SAME

DECISION

This decision is issued in response to "PETITION FOR REFUND UNDER 37 C.F.R. 1.26 OF FEE PAID FOR PETITION TO REVIVE APPLICATION UNDER 37 C.F.R. 1.137(B)" filed 09 June 2008.

### **BACKGROUND**

The present application went abandoned by operation of law based on applicant's failure to submit the U.S. basic national fee prior to the expiration of thirty months from the priority date. Subsequently, applicant filed both a petition to withdraw the holding of abandonment and, alternatively, a petition for revival of the application. In a decision mailed 23 August 2007, this Office dismissed the petition to withdraw the holding of abandonment, but granted the petition for revival of the application under 37 CFR 1.137(b). Thus, the present application is currently pending and awaiting further processing.

On 20 November 2006, applicant filed a "Petition To Withdraw The Holding Of Abandonment Under 37 CFR 1.181" and a "Petition For Revival Of An International Application For Patent Designating The U.S. Abandoned Unintentionally Under 37 CFR 1.137(b). The petition under 37 CFR 1.181 asserted that a Credit Card Payment Form authorizing a charge for the basic national fee was timely filed on 15 March 2005 (with the original national stage papers) and that abandonment of the application was therefore improper. This petition also asserted that the USPTO had not notified applicant of his failure to file the required fees prior to the expiration of the thirty month deadline, and that applicant had been misled by the USPTO regarding the status of the application prior to abandonment. The accompanying petition under 37 CFR 1.137(b) indicated that the abandonment of the application was unintentional.

On 12 January 2007, this Office mailed a decision dismissing without prejudice applicant's petitions under 37 CFR 1.181 and 1.137(b). With respect to the petition under 37 CFR 1.181, the decision found that applicant had not provided an adequate showing that the fee payment authorization had been included with the materials filed prior to the expiration of the thirty-month deadline (i.e., a return postcard bearing a USPTO receipt stamp). The decision stated that applicant's petition for revival under 37 CFR 1.137(b) had not been considered due to applicant's failure to provide the required petition fee.

On 26 April 2007, applicant filed "Applicant's Reply To Decision On Petition To Withdraw Holding Of Abandonment And Request For Consideration" (this filing was supplemented on 02 May 2007).

On 23 August 2007, this Office mailed a decision dismissing applicant's renewed petition for withdrawal of the holding of abandonment and granting the petition for revival under 37 CFR 1.137(b).

Despite the granting of applicant's petition for revival under 37 CFR 1.137(b), on 08 January 2008, applicant filed the "Applicant's Response To Decision On Alleged Renewed Petition To Withdraw Holding Of Abandonment."

On 12 May 2008 applicant withdrew the petition filed on 08 January 2008.

On 12 May 2008, a "Withdrawal of Previously Sent Notice" was mailed to applicant which indicated that the "Notice of Abandonment" mailed on 04/10/2006 was sent in error and is hereby withdrawn. As will be discussed below, this form is incorrect.

### DISCUSSION

On 12 May 2008, a "Withdrawal of Previously Sent Notice" was mailed to applicant which indicated that the "Notice of Abandonment" mailed on 04/10/2006 was sent in error and is hereby withdrawn. This form is incorrect. The language used for this form is when the Notice of Abandonment was improper. As noted in the file wrapper and this decision, the application became abandoned by operation of law due to the failure to pay the basic national fee at the expiration of 30 months from the priority date. Accordingly, the Notice of Abandonment mailed on 04/10/2006 was proper and is not vacated. The application has been restored to pending status by the granting of the petition under 37 CFR 1.137(b) to revive the international application.

### CONCLUSION

Based on the above, applicant's request for a refund of the fee required for a petition to revive under 37 CFR 1.137(b) is **DISMISSED** without prejudice.

The application is again referred to the National Stage Processing Branch of the Office of PCT Operations for further processing, including the mailing of a Notification Of Missing Requirements.

A handwritten signature in cursive script, appearing to read "Leonard E. Smith".

Leonard E. Smith  
Supervisory PCT Legal Examiner  
Office of PCT Legal Administration  
Telephone: (571) 272-3297  
Facsimile: (571) 273-0459